
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 520

The Environmental Information (Scotland) Regulations 2004

Exceptions from duty to make environmental information available

10.—(1) A Scottish public authority may refuse a request to make environmental information available if—

- (a) there is an exception to disclosure under paragraphs (4) or (5); and
- (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

(2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall—

- (a) interpret those paragraphs in a restrictive way; and
- (b) apply a presumption in favour of disclosure.

(3) Where the environmental information requested includes personal data, the authority shall not make those personal data available otherwise than in accordance with regulation 11.

(4) A Scottish public authority may refuse to make environmental information available to the extent that—

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the authority has complied with its duty under regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves making available internal communications.

(5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially—

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person—
 - (i) was not under, and could not have been put under, any legal obligation to supply the information;
 - (ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

(6) To the extent that the environmental information to be made available relates to information on emissions, a Scottish public authority shall not be entitled to refuse to make it available under an exception referred to in paragraph (5)(d) to (g).

(7) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is not made available by virtue of these Regulations unless it is not reasonably capable of being separated from that other information.

(8) For the purposes of this regulation, a Scottish public authority may respond to a request by not revealing whether such information exists or is held by it, whether or not it holds such information, if to do so would involve making information available which would, or would be likely to, prejudice substantially any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

(9) For the purposes of a response under paragraph (8), whether information exists and is held by the public authority is itself making information available.